



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 492

IN THE MATTER OF FRANCIS G. MARA

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Francis G. Mara ("Rep. Mara") pursuant to '5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, '4(j).

On June 22, 1993, the Commission initiated, pursuant to G.L. c. 268B, '4(a), a preliminary inquiry into allegations that Rep. Mara had violated the conflict of interest law, G.L. c. 268A. The Commission has concluded its inquiry and, on January 25, 1994, voted to find reasonable cause to believe that Rep. Mara violated G.L. c. 268A, '3 and 23(b)(3).

The Commission and Rep. Mara now agree to the following facts and conclusions of law:

1. Rep. Mara has served in the state legislature from January 1982 to the present. During that time, he has served on various committees including the Joint Committee on Insurance from 1983 to the present (chairman 1991 to the present).
2. Rep. Mara has sponsored or co-sponsored numerous bills affecting the insurance industry.
3. In addition, Rep. Mara, as a member of various legislative committees, has participated in many hearings on bills of interest to the insurance industry. Such participation has included voting on whether such bills should be reported out of committee. As chairman of the Joint Committee on Insurance, Rep. Mara has presided at that committee's hearings. Rep. Mara also has voted on bills of interest to the insurance industry when they reached the House floor.
4. During the period relevant here, F. William Sawyer ("Sawyer") was the senior John Hancock Mutual Life Insurance Company, Inc. ("Hancock") lobbyist responsible for Massachusetts legislation. At all relevant times, Sawyer was a registered legislative agent (for Hancock) in Massachusetts. Hancock, a Massachusetts corporation, is the nation's sixth largest life insurer doing business in all 50 states. It offers an array of life, health and investment products. As a Massachusetts domiciled life insurer, its activities are more comprehensively regulated by Massachusetts than by any other state.
5. During the period relevant here, George Traylor ("Traylor") was a registered legislative agent in Massachusetts for various clients, including the Medical Malpractice Joint Underwriting Association of Massachusetts. The association provides malpractice and incidental insurance coverage for physicians, dentists and hospitals.
6. During the period relevant here, William Carroll ("Carroll") was a registered legislative agent for the Life Insurance Association of Massachusetts ("LIAM"). LIAM is a trade association of life insurance companies doing business in Massachusetts.
7. At all relevant times, Rep. Mara knew that Sawyer and Carroll were Massachusetts registered lobbyists for Hancock and LIAM, respectively. Rep. Mara also knew that Traylor was a Massachusetts registered lobbyist representing a number of different clients. On occasion these individuals lobbied Rep. Mara regarding various pieces

of legislation.

8. Lobbyists are employed to promote, oppose or influence legislation.

9. One way in which some lobbyists further their legislative goals is to develop or maintain goodwill and personal relationships with legislators to ensure effective access to them. Some lobbyists entertain legislators through meals, drinks, golf and sporting events in order to develop the desired goodwill and personal relationships.

10. On the evening of September 19, 1992, Sawyer provided Rep. Mara and Rep. Mara's spouse with tickets to the *Phantom of the Opera* at the Wang Center (\$120);^{1/} drinks at the Wang Center (\$20) and after-dinner drinks at the Four Seasons (\$31). The total cost of the entertainment for Rep. Mara and his spouse was \$171.

11. From December 8, 1992 to December 14, 1992, Rep. Mara and his spouse were in Puerto Rico. Rep. Mara had registered to attend a Council of State Governments ("CSG") conference in San Juan. However, he and his spouse stayed at the Las Palmas del Mar Resort on the southern coast of Puerto Rico. The resort is approximately 40 miles from San Juan. Rep. Mara stayed at Las Palmas with several other legislators and a number of Massachusetts lobbyists. Rep. Mara maintains he chose not to stay at the conference hotel in San Juan because of safety concerns. According to Rep. Mara, because of the distance from San Juan, he did not attend any of the CSG conference functions.

On the evening of December 8, 1992, Rep. Mara and his spouse ate at the Las Palmas Terrace, a restaurant at Las Palmas del Mar. Rep. Mara did not pay for this meal. Sawyer's records indicate that Sawyer paid and that Rep. Mara and his spouse's pro rata share of the cost of the meal was \$55.

Rep. Mara and his spouse ate at the Casa Verde restaurant at Las Palmas del Mar on the evening of December 10, 1992. Again, Rep. Mara did not pay for the meal. Sawyer's records indicate that Sawyer paid and the Maras' pro rata share of the cost of the meal was \$70. As to each of the foregoing circumstances, Rep. Mara testified that although he knew that several Massachusetts lobbyists were staying at Las Palmas, he did not know who paid for the meal.

On December 13, 1992, Rep. Mara and his spouse, along with Rep. John Cox and his spouse, went on a fishing excursion with George Traylor and another Massachusetts lobbyist. Rep. Mara testified that when he and his spouse went on the excursion, he was under the impression that they were taking the place of certain other guests who had cancelled at the last moment. The boat was a 40 foot fishing vessel with a captain and one member crew. The cost of chartering the boat was \$383. The boat trip lasted several hours and included deep sea fishing and a stop for snorkeling. A box lunch was provided. Rep. Mara did not know what, if any, arrangements had been made between Traylor and the other lobbyist to pay for this excursion, although he assumed that one or both of them were paying for it. In fact, Traylor paid for the charter. The Maras' pro rata share of the cost of the charter was \$128.

12. Between March 10, 1993 and March 14, 1993, Rep. Mara and his spouse stayed at the Plantation Resort at Amelia Island, Florida where he had registered for an educational conference sponsored by the Conference of Insurance Legislators.^{2/} Rep. Mara stayed at the Plantation Resort with a number of other legislators and Massachusetts lobbyists.

On the evening of March 12, 1993, Rep. Mara and his wife ate dinner at the Ritz Carlton with a group of Massachusetts legislators and lobbyists. Rep. Mara understood that one or more lobbyists paid for the dinner, although he did not know who. Carroll, the lobbyist representing LIAM, paid for this dinner.^{3/} The total cost of the dinner was approximately \$3,000. The Maras' pro rata share of the cost of the dinner was approximately \$150.

13. Section 3(b) of G.L. c. 268A prohibits a state employee from directly or indirectly receiving anything of substantial value for or because of any official act or act within his official responsibility performed or to be performed by him.

14. Massachusetts legislators are state employees.

15. Anything worth \$50 or more is of substantial value for '3 purposes.^{4/}

16. By accepting a total of \$171 in drinks and theater ticket entertainment from Sawyer on September 19, 1992,

and a \$128 fishing boat excursion from Traylor on December 13, 1992, all while Rep. Mara was in a position to take official actions which could benefit those lobbyists, Rep. Mara accepted items of substantial value for or because of official acts or acts within his official responsibility performed or to be performed. In doing so he violated '3(b).^{5/6/}

17. As the facts above indicate, Rep. Mara received, in addition to the \$171 and \$128 in gratuities, a total of \$275 in gratuities of \$50 or more^{7/} where he did not know the specific identity of the source of the entertainment.

18. Section 23(b)(3) prohibits a public employee from knowingly or with reason to know acting in a manner which would cause a reasonable person knowing all of the circumstances to conclude that anyone can improperly influence or unduly enjoy his favor in the performance of his official duties.

19. By accepting entertainment of \$50 or more in value where he did not know the specific identity of the donor, but had reason to know that the donors were Massachusetts lobbyists, Rep. Mara acted in a manner which would cause a reasonable person knowing all these facts to conclude that the lobbyists present could improperly influence him in the performance of his official duties.^{8/} In other words, Rep. Mara knew or had reason to know that his actions would create an appearance of favoritism. In so doing, he violated '23(b)(3).^{9/}

20. The Commission is aware of no evidence that the gratuities referenced above were provided to Rep. Mara with the intent to influence any specific act by him as a legislator or any particular act within his official responsibility. The Commission is also aware of no evidence that Rep. Mara took any official action concerning any proposed legislation which would affect any of the registered Massachusetts lobbyists in return for the gratuities. However, even though the gratuities were only intended to foster official goodwill and access, they were still impermissible.^{10/}

21. Rep. Mara cooperated with the Commission's investigation.

In view of the foregoing violations of G.L. c. 268A by Rep. Mara, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Rep. Mara:

(1) that Rep. Mara pay to the Commission the sum of one thousand, seven hundred dollars (\$1,700.00) for violating G.L. c. 268A, " 3(b) and 23(b)(3);^{11/} and

(2) that Rep. Mara waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement and in any related administrative or judicial proceedings to which the Commission is or may be a party.

Date: May 12, 1994

^{1/} These numbers in parentheses reflect the cost of the entertainment for Rep. Mara and his spouse.

^{2/} According to his testimony, Rep. Mara attended conference sessions on March 12 and 13.

^{3/} The Commission has evidence Carroll subsequently received contributions of \$500 and \$600 from two of the Massachusetts lobbyists who were at this meal.

^{4/} See *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976); *EC-COI-93-14*.

^{5/} See &20.

^{6/} For '3 purposes, it is unnecessary to prove that the gratuities given were generated by some specific identifiable act performed or to be performed. As the Commission explained in *Advisory No. 8*, issued May 14, 1985, prohibiting private parties from giving free tickets worth \$50 or more to public employees who regulate them,

Even in the absence of any specifically identifiable matter that was, is or soon will be pending before the official, '3 may apply. Thus, where there is no prior social or business relationship between the giver and the recipient, and the recipient is a public official who is in a position to use [his] authority in a manner which could affect the giver, an inference can be drawn that the giver was seeking the goodwill of the official because of a perception by the giver that the public official's influence could benefit the giver. In such a case, the gratuity is given for his yet unidentifiable "acts to be performed."

Specifically, '3 applies to generalized goodwill-engendering entertainment of legislators by private parties, even where no specific legislation is discussed. *In re Flaherty*, 1991 SEC 498, issued December 10, 1990 (majority leader violates '3 by accepting six Celtics tickets from billboard company's lobbyists). *In re Massachusetts Candy and Tobacco Distributors, Inc.*, 1992 SEC 609 (company representing distributors violates '3 by providing a free day's outing [a barbecue lunch, golf or tennis, a cocktail hour and a clam bake dinner], worth over \$100 per person, to over 50 legislators, their staffers and family members, with the intent of enhancing the distributors' image with the Legislature and where the legislators were in a position to benefit the distributors).

Section 3 applies to meals and golf, including those occasions motivated by business reasons, for example, the so-called "business lunch". *In re U.S. Trust*, 1988 SEC 356. Finally, '3 applies to entertainment gratuities of \$50 or more even in connection with educational conferences. *In re Stone & Webster*, 1991 SEC 522, and *In re State Street Bank*, 1992 SEC 582.

Rep. Mara has argued that '3 does not apply to meals given to legislators. There is nothing in the legislative history regarding '3 or the language of '3 to support that argument. In the Commission's view, '3 applies to any form of entertainment, including meals, given to any public official.

On the present facts, '3 applies to the lobbyists entertaining Rep. Mara where the intent was generally to create goodwill and the opportunity for access, even though specific legislation was not discussed.

⁷ 12/8/92 (\$55); 12/10/92 (\$70) and 3/12/93 (\$150).

⁸ Moreover, the possibility can never be eliminated that Rep. Mara would later be told of the specific sources of the various gratuities described above. This only adds to the appearance concern created by such conduct.

⁹ This conduct also raises issues under '3, discussed above. Nothing in '3 requires that the public official know the source of the gift. All that is required is that the public official know that he is receiving the gift for or because of official acts or acts within his official responsibility. On the foregoing facts, that could be inferred even though Rep. Mara did not know the specific identity of the donor. In any event, because this is a matter of first impression, the Commission has decided to resolve this conduct pursuant to '23.

¹⁰ As discussed above in footnote 6, '3 of G.L. c. 268A is violated even where there is no evidence of an understanding that the gratuity is being given in exchange for a specific act performed or to be performed. Indeed, any such *quid pro quo* understanding would raise extremely serious concerns under the bribe section of the conflict of interest law, G.L. c. 268A, '2. Section 2 is not applicable in this case, however, as there was no such *quid pro quo* between the lobbyists and Rep. Mara.

¹¹ This amount is approximately three times the value of the \$574 in prohibited gratuities received by Rep. Mara in violation of '3 and '23(b)(3). It represents both a disgorgement of the gratuities and a civil sanction.